STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of RENE ANN MATEO, Complainant, vs. SI-NOR, INC., Respondent, and DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, Appellee.	)	CASE NO. OSH 2003-18 DECISION NO. 10 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This Occupational Safety and Health case comes before the Hawaii Labor Relations Board (Board) pursuant to a written notice of contest filed July 24, 2003, by Respondent SI-NOR, INC. (Respondent or SI-NOR). SI-NOR contests the decision and order issued July 7, 2003, by Appellee DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Director), via the Hawaii Division of Occupational Safety and Health (HIOSH), finding Respondent violated Hawaii Revised Statutes (HRS) § 396-8(e) by terminating Complainant RENE ANN MATEO (Complainant or MATEO) for participation in safety and health protected activity by reporting death threats to SI-NOR.

On September 2, 2003, the Board held an initial conference attended by the legal representatives for the Director and Complainant MATEO, and Respondent SI-NOR. Pursuant to a Pretrial Order, the issues for hearing are:

1. Whether Respondent SI-NOR violated Hawaii Revised Statutes (HRS) §§ 396-8(e) and (3) by discriminating against the Complainant for engaging in protected activity?

2. If so, whether the penalties imposed including reinstatement, payment of back wages, clearance of

personnel records, and payment of a $1,000 fine as imposed by the Hawaii Occupational Safety Health Division, Department of Labor and Industrial Relations were appropriate?

Pursuant to a status conference held on January 15, 2004, the evidentiary hearing was rescheduled from January 26, 2004 to April 19 - 21, 2004, by Board Order No. 85. By Board Order No. 92, issued March 25, 2004, the discovery deadline was extended from December 29, 2003 to March 29, 2004, to permit Complainant time to respond to Respondent's First Request for Production of Documents and Things from Complainant Rene Mateo and Respondent's First Request for Answers to Interrogatories to Complainant, dated December 5, 2003, respectively.

The Board conducted hearings on April 19, 20, and 21, 2004. The Director and SI-NOR, were both represented by counsel and given full opportunity to present evidence, examine and cross-examine witnesses and make arguments. Complainant, proceeded pro se, participated as a witness, waived her right to examine witnesses and introduce evidence, and deferred to the Director to present its case-in-chief. Closing memoranda were filed by the Director and Respondent SI-NOR on June 4, 2004. After a thorough review of the record in the case, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. SI-NOR is a refuse collection and recycling company, incorporated in California in 1992. Its administrative and fiscal offices are located at 1345 Fitzgerald Avenue, Suite F, Rialto California.

2. Silas Ugorji, (Ugorji) is SI-NOR's President, who was in Hawaii on or about March 30, 2003, to address compliance problems with SI-NOR's federal government contracts to collect refuse at several military bases on Oahu.[1]

3. Complainant MATEO was initially hired by SI-NOR as a general clerk in November 2002, and elevated to project coordinator on or about December 30, 2002 to oversee all Hawaii operations.[2] At the time of her hire, SI-NOR had no permanent office location in Hawaii and MATEO worked out of her home

[1]SI-NOR received Contract Discrepancy Reports showing deficiencies and unsatisfactory contract performance.

[2]See, Respondent's Exhibits (Ex.) F and G.

where she created and maintained SI-NOR's business records, including personnel files and tonnage reports.[3]

4. On or about March 30, 2003, Complainant held the position of office manager for SI-NOR's Hawaii operations, working in tandem with SI-NOR's newly hired project manager, Daniel G. Beauchesne (Beauchesne).

5. On April 2, 2003, following a cure meeting held with the federal contractors, Ugorji terminated Beauchesne for mismanagement as SI-NOR's project manager of operations in Hawaii. Complainant continued to serve as office manager, for SI-NOR's Hawaii operations, because Ugorji believed with proper supervision and given her experience with the company's refuse operations, she would do a better job and help to improve SI-NOR's performance.[4]

6. On Friday, April 4, 2003, Ugorji introduced to the SI-NOR's refuse crews, its new project manager Frank Grinnage (Grinnage) to replace Beauchesne. Both Ugorji and Grinnage addressed the employees about the need to improve operations and do a better job, as opposed to business as usual, because the federal contractors had identified deficiencies in SI-NOR's performance.[5]

7. Complainant attended the April 4th meeting and brought the payroll checks for distribution, but failed to bring the tonnage reports which Ugorji had instructed her to produce for March 2003. Complainant was responsible for preparing the tonnage reports based on the dump (landfill) receipts turned in by the refuse drivers, which Complainant would send to SI-NOR's California office regularly, as well as provide directly to the Navy and Air Force on a weekly basis. The tonnage reports were necessary in order to be reimbursed by the Navy and Air Force for the upfront landfill cost paid by SI-NOR. Complainant never produced to Ugorji the tonnage report for March 2003.[6]

8. On April 4, 2003, Grinnage met with Complainant and outlined the changes in operations that he planned to implement and to get her input as to the

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[3]The Board took administrative notice of the testimony by Complainant in Case No. OSAB 2003-3, Director, Department of Labor and Industrial Relations v. SI-NOR, Inc., taken on September 26, 2003, and Consolidated Case Nos. OSH 2003-8 to 2003-14, Sheldon Keliinoi v. SI-NOR, Inc., et al., taken on January 15, 2004.

[4]See, Transcript (Tr.) of proceedings on April 21, 2004 (Vol. III), p. 74.

[5]Tr. of proceedings on April 20, 2004 (Vol. II), pp. 25-27.

[6]Tr. Vol. II, pp. 42-43.

positive changes that could be made to improve operations. Grinnage also outlined Complainant's responsibilities as the office manager to include maintaining vehicle and personnel files, and providing secretarial services. With respect to office hours, Grinnage informed Complainant that he expected her to work an eight-hour work day with a 45 minute lunch, and gave her a choice of starting time. Complainant chose to start work at 8:00 a.m. Grinnage indicated to Complainant that starting on Monday (April 7, 2003) from 8:00 a.m. to 4:45 p.m., he expected her to report to work, and to bring with her all the company files (personnel and vehicle maintenance records), credit cards and petty cash, which Complainant had been keeping at her home.[7]

9. According to Grinnage, at their meeting on April 4, 2003, Complainant remarked to him that she received a call on her company cell phone threatening Grinnage as the new project manager. This was mentioned after Grinnage told Complainant in passing that he hadn't even been on the job for a day, but had already received a threatening phone call.[8] Grinnage told Ugorji of the phone threats to him and Complainant.[9]

10. Grinnage felt that Complainant was not happy about putting so much work into the company, and not being given the opportunity to run operations as the project manager. The Board credits Grinnage's testimony which was unrebutted by Complainant.[10]

11. On April 7, 2003, Complainant did not report to work with the company files as Grinnage had expected. Grinnage reported Complainant's failure to report to work to Ugorji, who in turn called Complainant and left a message to call back, but as of noon Ugorji had not heard from Complainant.[11]

12. On April 8, 2003, at or around 7:30 a.m., Grinnage received a phone call on his company cell phone, threatening to shoot him and Complainant. Grinnage reported the threatening phone call to Ugorji, who directed him to call the police and make a report.[12]

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[7]Tr. Vol. III, pp. 8-11.

[8]Id., pp. 11-12, 14.

[9]Id., pp. 77-78.

[10]Id., p. 14.

[11]Id., pp. 15-17.

[12]Id., p. 21. Grinnage testified that the caller said something to the effect: "I'm going to shoot you and Renee."

13. Grinnage informed Ugorji of the threatening phone calls to him and Complainant on April 4, 2003, and again on April 8, 2003, before Complainant showed up for work on April 8, 2004.[13] Grinnage understood that up until the meeting with Complainant on April 8, 2003, Ugorji never intended to terminate her, despite problems with Complainant's tonnage reports and failure to show up for work on April 7th.[14] Grinnage understood that Ugorji

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[13]Grinnage testified in response to questions by the Board Chair as follows:

Chair:	Okay. Now as of Friday afternoon, Silas knew of the threats to you and Rene?
Mr. Grinnage:	Yes. I did tell him that.
Chair:	Okay. And as of 7:30 Tuesday morning, Silas knew that you had received a direct threat to you and Rene?
Mr. Grinnage:	Yes.

See, Id., pp. 77-78.

[14]Grinnage testified further:

Chair:	Rene didn't – you don't recall anything being said between – something to the effect that she was important to the company and you're fired? This isn't going to work out, you're fired?
Mr. Grinnage:	That meeting – or prior to that meeting, Silas had, you know, indicated to me that Rene would be helpful in the transition. I indicated to Silas that I didn't think – that was my opinion, I didn't think that that would be the case. And he objected, and that's when he told me pretty much that I will work with Rene. And he, I believe, thought that she would be a help, given the proper supervision. I sense from Rene that she understood that there would be supervision.
Chair:	My question is, with regard to the firing, there seems to have been 180 degree turn from Silas.
Mr. Grinnage:	Well, prior to the meeting, there was no intent by Silas to let Rene go.
Chair:	Yeah, So what happened?
Mr. Grinnage:	As I understand it, based on her actions, he came to the realization that she's not going to cooperate.

Id., pp. 73-74.

wanted her to continue working for SI-NOR under his supervision.[15]

14. On April 8, 2003, about an hour after Grinnage called, the police arrived to investigate Grinnage's report of terroristic threatening. Based on the caller identification number provided by Grinnage, the police were able to trace the call to a parking lot area of Marukai Market, 2260 Kamehameha Hwy.[16]

15. On April 8, 2003, at or around 7:00 a.m., Complainant testified that while driving her boyfriend, Ituomanu Patea (Patea), to work, she received a phone call on her company cell phone, threatening to shoot her and Grinnage. She called Ugorji to report the threatening call, and he directed her to call the police. Complainant did not make a police report about any of the threatening phone calls until April 17, 2003.[17]

16. Patea is a supervisor at Ace Auto Glass and Tinting, which is located at 2250 Kamehameha Highway, just a few doors away from the pay phone in the parking lot area of Marukai Market, where the call to Grinnage was placed.[18]

17. On April 8, 2003, Complainant finally showed up at work, and met with Ugorji and Grinnage around 9:00 or 9:30 a.m. after the police left. Both Ugorji and Grinnage began the meeting by asking Complainant for the tonnage reports and credit cards, employee files, and petty cash. Ugorji saw that Complainant was "not cooperating." Grinnage "was not happy about the fact that she didn't show up Monday and she showed up late today and didn't bring what [he] asked her to bring." At one point Ugorji told Complainant, he needed her to work with Grinnage. But when Complainant just glared at Grinnage instead of responding to Ugorji's plea for cooperation, Ugorji then told Complainant: "I can see that this is not going to work out, I'm going to have to let you go."[19] Whereupon, Ugorji asked Complainant to turn in her company cell phone and credit cards. The Board finds that Ugorji made the decision to terminate Complainant and informed her of his decision, before he received the threatening phone call from Complainant's boyfriend. The Board credits the

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[15]Id., pp. 89-92.

[16]See, Director's Ex. B23. From this the Board can infer that the threatening phone call to Grinnage on April 8, 2003, could have been placed by Patea based on the close proximity of the pay phone to his place of work.

[17]See, Tr. of proceedings dated April 19, 2004 (Vol. I), pp. 18-21;127 and Director's Ex. B-14.

[18]Tr. Vol. I, p. 141; see also, Director's Ex. B-23.

[19]See, Tr. Vol III, pp. 23-25; and Tr. Vol. II, pp. 35-37.

testimony of both Grinnage and Ugorji, over Complainant's, that he decided to terminate her because of her unprofessional attitude and lack of cooperation.

18. Shortly after Ugorji was given the cell phone by Complainant, Patea called and Ugorji answered the phone. After informing Patea that Complainant was not available, Ugorji offered to take his name and call back number, Patea responded by continuing to ask for Complainant, using profane and racially derogatory language at Ugorji, before hanging up. Ugorji instructed Grinnage to notify the police of yet another threatening phone call. Ugorji also asked Complainant not to leave since they were calling the police, but Complainant was upset and left SI-NOR, and called Patea to let him know that the last phone call was being reported to the police.[20]

19. On April 9, 2003, Complainant filed a discrimination complaint with HIOSH alleging that after she reported receiving threatening phone calls to Ugorji on April 8, 2003, and immediately following the phone call that Ugorji received from Patea, Ugorji told Complainant: "You are fired. I don't need you bringing trouble to the yard."[21]

20. On July 7, 2003, the Director determined that based on its Findings of Discrimination Investigation, SI-NOR violated HRS § 396-8(e) by terminating Complainant "because of participation in safety and health protected activity."[22]

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[20]Id., pp. 36-37.

[21]See, Director's Ex. B-1.

[22]The Director's Findings of Discrimination Investigation state in part:

> The following evidence supports findings of a violation that Ms. Mateo was discriminated against when her employment was terminated.
>
> a. Ms. Mateo engaged in a protected activity when she complained to Mr. Silas Ugorji about receiving death threats via phone calls.
> b. Employer was fully aware of the situation because Mr. Ugorji received the complaint.
> c. Adverse action occurred when Ms. Rene Mateo was terminated.
> d. Management demonstrated animus when Mr. Ugorji fired Ms. Mateo and stated, "you are fired. I don't need you bringing trouble to the company," immediately after she notified him of the threats against her life.

21. The Board finds Complainant's unprofessional attitude and unrebutted evidence of Complainant's unwillingness to cooperate and work with Grinnage to correct the deficiencies and improve SI-NOR's performance of its military contracts, are legitimate, nonretaliatory reasons for Ugorji's decision to discharge MATEO.

22. The Board does not credit Complainant's version of what led Ugorji to terminate her on April 8, 2003.[23] First, Complainant's testimony that she first went into work and gave Ugorji the tonnage report the morning of April 8, 2003, and her complaint to HIOSH, that states she "gave Silas the tonnage report" on April 8th, was rebutted by Ugorji who testified that she never provided the tonnage reports, and Grinnage, who testified the Complainant never provided the employee records she was directed to bring to the office.[24] Second, Complainant testified that she gave Ugorji her cell phone after being called back to work by Ugorji, "[b]ecause he wanted to know if I could find the phone number that was calling."[25] The Board credits Ugorji who testified that he asked Complainant to return the phone after he decided that he would have to let her go. Ugorji was informed of the threatening phone calls by Grinnage, who immediately made a police report as Ugorji had instructed. Therefore, regarding Complainant's reports of threatening phone calls, the Board finds Grinnage and Ugorji more credible than Complainant. On this basis, the Board concludes that Complainant's reports of threatening phone calls, were not a substantial factor in Ugorji's decision to terminate Complainant.

It is further found that the employer's offered reason for termination, mismanagement of the military contracts, was a pretext in that Ms. Mateo did not occupy a management position with responsibility for the contracts. She was an Office Manager. In addition, the General Manager, who had the responsibility for the contracts, was terminated on April 2, 2003, and immediately replaced by another individual." Id.

[23]See, Director's Exs. B-12, B-13 and B-14.

[24]Ugorji testified that the company was short by $30,000 to $40,000 and couldn't get reimbursed from the Navy and Air Force without the tonnage report for March 2003. In order to get paid, Ugorji had to reconstruct the amount of refuse dumped by each company truck using records from the landfill and H-Power. See, Tr. Vol. II, pp. 42-43.

[25]Tr. Vol. I, p. 33.

DISCUSSION

The issue in the instant appeal filed by Respondent is whether Complainant was terminated in violation of HRS § 396-8(e), for having reported anonymous threatening phones calls to her employer.

The purpose of the Hawaii Occupational Safety and Health Law, Chapter 396, HRS, is to encourage employee efforts at reducing injury and disease arising out of the workplace and to prevent retaliatory measures taken against those employees who exercise these rights.

HRS § 396-8 provides, in part:

> (e) Discharge or discrimination against employees for exercising any right under this chapter is prohibited. In consideration of this prohibition:
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> * * *
>
> (3) No person shall discharge or in any manner discriminate against any employee because the employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or intends to testify in any such proceeding, or acting to exercise or exercised on behalf of the employee or others any right afforded by this chapter; . . . .

The burden of proof is the Director's and/or Complainant's to establish by a preponderance of evidence[26] a prima facie case of discrimination.

> Courts have adopted the shifting burden of proof application in pretext cases to Section 11(c) retaliation claims. The Secretary bears the initial burden of demonstrating: (1) that an employee engaged in protected activity, (2) that the employee suffered an adverse employment action, and (3) that there was a causal nexus between the protected activity and the adverse

[26]The Director/Complainant have the burden of proof as well as the burden of persuasion. The degree or quantum of proof is by a preponderance of evidence. HRS § 91-10(5). The preponderance of the evidence has been defined as "that quantum of evidence which is sufficient to convince the trier-of-fact that the facts asserted by a proponent are more probably true than false." Ultimate Distribution Systems, Inc., 1982 OSHD § 26.011 (1982).

> action. Causation may be inferred from circumstantial evidence. The burden then shifts to the employer to proffer a permissive, nondiscriminatory reason for the employment action. Finally, the Secretary must demonstrate that the employer's reason is merely a pretext for discrimination.

Rabinowitz, Occupational Safety and Health Law, 1999 Cumulative Supplement, 400 (BNA Books 1999) (footnotes omitted.) See also, Jim Skellington v. City and County of Honolulu, Kapolei Fire Station, OSAB 97-015 (LIRAB August 29, 2001); and Kay Miura v. Pacific Ohana Hostel, Decision 2, OSAB 2002-16 (HLRB October 4, 2002) (Miura).[27]

The preponderance of evidence supports the Board's findings that Complainant engaged in protected activity with in the meaning of HRS § 396-8(e), and suffered an adverse employment action. "[T]he federal counterpart to HRS § 396-8(e) has consistently been interpreted to include complaints to the employer, as well as to occupational safety and health authorities." Samuel M. Cruz, Jr. v. Fast Signs, OSAB 97-032 (LIRAB June 10, 1999) (citing Marshall v. Springville Poultry Farm, Inc., 445 F.Supp. 2 (M.D. Penn. 1977); Reich v. Cambridgeport Air Systems, Inc., 26 F.3d 1187 (1st Cir. 1994).

Respondent knew of Complainant's protected activity when Complainant was terminated. Grinnage testified that Ugorji knew of the threatening phone calls because he informed him on April 4, 2003, and on April 8, 2003. Furthermore, Grinnage understood

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[27]In Miura, supra, the Board stated that:

> The burden of proof is the Director's and/or Complainant's to establish by a preponderance of evidence a prima facie case of discrimination.
>
> "Proof of a prima facie case of retaliatory discharge requires a showing that (1) plaintiff engaged in a protected activity, (2) the employer subjected her to an adverse employment action, and (3) a causal link exists between the protected activity and the adverse employment action. (Citation omitted.) Like disparate treatment claims, the evidence necessary to establish a prima facie case of retaliatory discharge is minimal. (Citation omitted.) A plaintiff may satisfy the first two elements by demonstrating that she was fired, demoted, transferred or subjected to some other adverse action after engaging in protected activity. The causal link may be inferred from circumstantial evidence such as the employer's knowledge that the plaintiff engaged in protected activity and the proximity in time between the protected action and the allegedly retaliatory employment decision." Marcia Linville v. State of Hawaii, et al., 874 F.Supp 1095, 1110 (D. Haw. 1994).

that up until the meeting with Complainant on April 8, 2003, Ugorji never intended to terminate Complainant. And despite problems with Complainant's tonnage reports and failure to show up for work on April 7th, Grinnage understood that Ugorji wanted Complainant to continue working for SI-NOR under his supervision. Hence, the Director has met the burden of proof with respect to the first two elements of a prima facie case.

Regarding the causal link between the protected activity and Complainant's termination, the Director/Complainant contends that the occurrences of both events in the same day, are sufficient to establish a causal connection. The Board disagrees.

Under HIOSH's administrative rules, a causal link between an employee's protected activity and an employer's adverse action may be established in one of two different ways:

> (a) The protected activity must constitute a substantial factor for the discharge or other adverse action, or
>
> (b) The discharge or other adverse action would not have taken place "but for" engagement in the protected activity by the employee.

Hawaii Administrative Rules (HAR) § 12-57-3.

The Board is not convinced that "the short lapse in time between Mateo's report of threats and her subsequent firing create an inference that she would not have been fired but for her report." See Board Ex. 18, Director's Post Hearing Brief, p. 18. In Miura, supra, the burden of proof analysis adopted by the Board was whether the protected activity, i.e., reporting a threat to the police, was a substantial factor in the employer's decision to discharge the employee.

In the instant case, even though Complainant was discharged after Grinnage reported receiving threatening phone calls, the short lapse in time does not, in and of itself, create an inference of discrimination. Furthermore, the weight of the evidence and Complainant's lack of credibility, do not support a finding that the exercise of a protected activity was a substantial factor in Respondent's decision to discharge Complainant. Based on the credible testimony of Grinnage and Ugorji, the real reason for Complainant's discharge was her demonstrated lack of cooperation and work attitude toward the newly hired project manager to improve operations in light of compliance deficiencies raised by the federal contractors.

Grinnage understood that up until the meeting with Complainant on April 8, 2003, Ugorji never intended to terminate her. Even though Grinnage started having misgivings about Complainant's ability to do the work, Ugorji believed that with proper

supervision, and given her experience with the company's refuse operations, she would do a better job and help to improve SI-NOR's performance. But on April 8, 2003, in the course of meeting with Complainant, Ugorji's plea for cooperation in working with Grinnage necessary to improve the company's performance was met with a glare. That's when Ugorji told Complainant, "I can see that this is not going to work out, I'm going to have to let you go." In addition, there's no evidence that Ugorji harbored any resentment over learning about threatening phone calls. When Grinnage informed Ugorji of the threatening phone calls, Ugorji did not hesitate to instruct him to make a police report. Regarding Complainant's reports of threatening phone calls, the Board finds Grinnage and Ugorji more credible than Complainant. On this basis, the Board concludes that Complainant's reports of threatening phone calls, were not a substantial factor in Ugorji's decision to terminate Complainant.

Assuming arguendo, a prima facie case of discrimination was established, the burden shifts to Respondent "to articulate a legitimate, nonretaliatory explanation for its decision." In the instant case, SI-NOR has established by a preponderance of the evidence that it would have reached the same decision even in the absence of the protected conduct. Marshall v. Commonwealth Aquarium, 469 F.Supp. 690, 692 (Mass. 1979). Based on the Board finding of Complainant's unprofessional attitude and unwillingness to cooperate and work with Grinnage to correct the deficiencies and improve SI-NOR's performance of its military contracts, we conclude that Ugorji had a legitimate, nonretaliatory reason for discharging Complainant.

If the [Respondent] carries this burden satisfactorily, the burden shifts back to the [Director/Complainant] to show that the alleged explanation is a pretext for impermissible retaliation." Marcia Linville v. State of Hawaii, et al., supra, at 1110. The Complainant may succeed in this burden either directly, by persuading the trier-of-fact that a discriminatory reason more likely motivated the employer, or indirectly, by showing that the employer's proffered explanation is unworthy of credence. Id., at 1109.

In the instant case, the Board credits Respondent's proffered explanation. Whereas, the Board does not credit Complainant's version of what led Ugorji to terminate her on April 8, 2003. First, Complainant's testimony that she first went into work and gave Ugorji the tonnage report the morning of April 8, 2003, and her complaint to HIOSH, that states she "gave Silas the tonnage report" on April 8th, was rebutted by Ugorji who testified that she never provided the tonnage reports, and Grinnage, who testified the Complainant never provided the employee records she was directed to bring to the office. Second, Complainant testified that she gave Ugorji her cell phone after being called back to work by Ugorji, "[b]ecause he wanted to know if I could find the phone number that was calling." The Board credits Ugorji who testified that he asked Complainant to return the phone after he decided that he would have to let her go. Ugorji was informed of the threatening phone calls by Grinnage, who immediately made a police report as Ugorji had instructed. Therefore, regarding Complainant's reports of threatening phone calls, the Board finds

Grinnage and Ugorji more credible than Complainant. On this basis, the Board concludes that Complainant's reports of threatening phone calls, were not a substantial factor in Ugorji's decision to terminate Complainant. Accordingly, the Director and Complainant have failed to show by a preponderance of evidence that but for Complainant's reports of threatening phone calls, Ugorji would not have discharged her on April 8, 2003.

Based on the foregoing, the Board concludes that Respondent did not unlawfully terminate Complainant in violation of HRS § 396-8(e).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the instant contest pursuant to HRS § 396-11.

2. The Director and Complainant proved by a preponderance of evidence that the Respondent terminated Complainant after she engaged in protected activity under HRS Chapter 396.

3. The Director and Complainant failed to prove by a preponderance of evidence that Complainant's reports of threatening phone calls on April 8, 2003, were a substantial factor in Respondent's decision to terminate Complainant.

4. The Respondent proved by a preponderance of evidence that it had legitimate, nonretaliatory reasons for terminating Complainant.

5. The Director and Complainant failed to prove by a preponderance of evidence that but for Complainant's reports of threatening phone calls, she would not have been discharged. Therefore, Respondent's legitimate, nonretaliatory reasons proffered for terminating Complainant, was not a pretext for discrimination.

6. The Board concludes that Complainant was not terminated for engaging in the exercise of a protected activity under HRS § 396-8(e).

7. The Board concludes that Respondent did not violate HRS § 396-8(e) by terminating Complainant.

ORDER

It is hereby ordered that in accordance with the foregoing, the Director's decision, dated July 7, 2003, the corresponding backpay award and penalty assessed against SI-NOR are vacated.

DATED: Honolulu, Hawaii, February 24, 2005 .

HAWAII LABOR RELATIONS BOARD

/s/
BRIAN K. NAKAMURA, Chair

/s/
CHESTER C. KUNITAKE, Member

/s/
KATHLEEN RACUYA-MARKRICH, Member

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